

COOPERATIVE AGREEMENT

between

ROCKY MOUNTAIN REGION, NATIONAL PARK SERVICE

and the

DIVISION OF OIL, GAS AND MINING, STATE OF UTAH

Article I. Background and Objectives

A. Background

This agreement presents the procedures for inventory, characterization, closure, reclamation, and post closure monitoring of abandoned mines on National Park System lands in the State of Utah. This agreement defines the responsibilities of the Rocky Mountain Region, National Park Service (RMR, NPS) and the State of Utah Division of Oil, Gas, and Mining, Abandoned Mine Reclamation Program (DOGM) in implementing the procedures.

Reclamation and closure of abandoned mines and associated lands are critical to protect human health and safety as well as eliminate possibilities of environmental contamination.

This cooperative agreement between the National Park Service and the Division of Oil, Gas, and Mining allows the National Park Service to augment its abandoned mine land program and responsibilities by utilizing the expertise on abandoned mine land closure and reclamation available at the Division of Oil, Gas and Mining. The agreement also allows the Division of Oil, Gas, and Mining to implement its responsibilities in Utah lands administered by the National Park Service (NPS).

Under the authority of the December 12, 1980, Cooperative Agreement between the Governor of Utah and the Regional Director, Rocky Mountain Region, National Park Service, Item III.B.9, supplemental cooperative agreements may be implemented between the appropriate State agencies and the appropriate NPS offices.

The National Park Service is responsible for managing National Park System lands under the NPS Organic Act and its amendments (16 USC 1a-1). The NPS, as a Federal land managing agency, is further directed under a wide array of Federal laws for natural and cultural resources management. All of these statutes, where appropriate, must be considered in the assessment, closure, and reclamation of abandoned mines on NPS lands.

The Division of Oil, Gas, and Mining is the designated authority for the State of Utah responsible for implementation of a statewide program for the reclamation of abandoned mines under State and Federal law and implementing regulations (Section 40-10-1 et seq. Utah Code Annotated; P.L. 95-87).

Because the DOGM and NPS have certain procedural requirements under their separate mandates, both the DOGM and the NPS must work together to coordinate actions of common concern relating to the reclamation of abandoned mines on NPS lands.

B. Objectives

1. To survey, inventory and characterize abandoned mines and associated health and environmental hazards on NPS lands in Utah. Characterization should include size; stability; chemical analyses of air, water, soil, and waste rock; potential human and environmental hazards; and other characteristics unique to each mine site.
2. To prioritize abandoned mine lands for evaluation and closure.
3. To develop and assess alternatives for closure and reclamation of abandoned mines on NPS lands.
4. To select and implement closure and reclamation of abandoned mines on NPS lands in accordance with laws, regulation, and policies guiding NPS management and natural and cultural resources compliance.

Article II. Statements of Work

A. The National Park Service will:

1. Identify each National Park Service unit ("Park") that contains abandoned mines that the NPS wishes to examine.
2. Inventory, characterize, and prioritize those sites for reclamation.
3. Request the DOGM to assist with reclamation planning and closure of abandoned mine lands and designate the Park and extent of area to be considered for abandoned mine reclamation.
4. Review all construction contracts prior to release for bid. Such review will be conducted by NPS contracting specialist.
5. Provide oversight on the development of alternatives for abandoned mine closure and reclamation. This will include design standards and specification. Review and evaluate closure alternatives documents in draft and final form. The NPS will respond to these planning documents within thirty (30) working days or other such time as is mutually agreed upon. The Park Superintendent (in case of a single-park project) or the Regional Director (in the case of a multi-park project) will select the preferred alternative for closure and reclamation as in the best interest of public safety and the NPS mission.
6. Conduct all required cultural resources compliance in accordance with section 106 of the National Historic Preservation Act (16 USC §470) on closure and reclamation activities prior to DOGM proceeding with reclamation construction.

7. Provide for compliance with the National Environmental Policy Act of 1969 (42 USC 4321 et seq) and Section 7 of the Endangered Species Act (16 USC 1531 et seq) on abandoned mine land reclamation projects and issue appropriate documents prior to DOGM proceeding with reclamation construction.
8. Treat all draft inventory, planning, and construction documents as confidential bid documents and not allow release outside the NPS staff. The final reclamation plan will be available for public release when the bidding process is initiated under the direction of DOGM. In order to comply with environmental and cultural regulations, alternatives (without construction specifications) will be discussed and released for public review in an environmental assessment.
9. Determine whether to procure construction services and provide oversight, management, and inspection of the on-the-ground construction and reclamation work itself, or to delegate this work to DOGM if determined to be in the best interest of the Federal government.
10. Review, evaluate, and respond to progress reports submitted quarterly by DOGM on the closure and reclamation work.
11. Immediately notify DOGM of problems or concerns that arise during reclamation construction or during follow-up monitoring and communicate them directly to the DOGM representative and not to the contractor when the NPS has directed DOGM to administer the contract in the best interest of the Federal government.
12. Conduct follow-up monitoring of abandoned mines after closure and reclamation to assure long-term project success.

B. Upon request by the NPS the DOGM will:

1. Provide information from the inventory of abandoned mine lands in Utah to NPS.
2. Prepare, under the direction of NPS Regional Director or designated Park Superintendent, a planning document addressing and assessing alternatives for closure and reclamation of abandoned mine lands. Alternatives must be generated with consideration for NPS management constraints.

Submit this alternatives document for NPS review and comment in draft form. Incorporate NPS comments and preferred alternative into the final closure document. The Park Superintendent (on single-park projects) or the Regional Director (on multi-park projects) is responsible for selecting the preferred alternative for closure and reclamation and for approval of the final closure and reclamation document.

3. Provide available information to assist in the preparation of cultural and environmental compliance documents by the NPS.
4. Develop project construction documents based on the NPS selection of the preferred closure and reclamation alternatives. Submit these documents for review, comment, and approval by NPS.
5. Procure construction services in accordance with Federal contracting regulations if requested by the NPS. Provide full-time management and regular inspections on site of on-the-ground reclamation construction work for all delegated projects.
6. Proceed on project work only with approval of the NPS Park Superintendent (on single-park projects) or Regional Director (on multi-park projects).
7. Assume all costs and liabilities for DOGM personnel for those activities to conduct studies, do exploratory assessment work of the hazards and surface disturbance, perform project management, and oversee the reclamation construction on abandoned mine sites within NPS-administered lands in Utah.
8. Observe all laws and regulations applicable to the premises of the Park.

C. Mutual Responsibilities: The NPS and DOGM will:

1. Closely coordinate the timing of all investigative, planning, contracting, and construction activities.
2. Designate representatives to carry out the work described in this Cooperative Agreement.
3. Share information, technical data, and technical expertise concerning abandoned mines with the other party and cooperate in public relations matters, on-site investigations, data collection, and evaluation of alternatives involved in planning document preparation.
4. Except as herein stated, not undertake any activity, either expressed or implied, nor make any representation that purports to bind the other.

Article III. Term of Agreement

Nothing in this Cooperative Agreement shall be construed as limiting or expanding the statutory or regulatory responsibilities of the NPS and the DOGM in performing functions beyond those granted to them by law; or as requiring either party to expend any sum in excess of its respective appropriations. Each and every provision of this agreement is subject to the laws and regulations of the Department of the Interior.

This agreement is also subject to the limitations and agreement set forth in the 1980 Cooperative Agreement between the State of Utah and the Rocky Mountain Region of the National Park Service.

This Cooperative Agreement shall become effective when signed by the designated representatives of the parties to this agreement. The Agreement shall remain in effect for five years, at which time it will be reviewed to determine whether it should be renewed, modified, or terminated.

Amendments to this agreement may be proposed at any time by either party, and shall become effective upon written approval by both.

Article IV. Key Officials

Key officials for the National Park Service will be the Park Superintendent for single-park projects and the Regional Director, Rocky Mountain Region for multi-park projects. Key official for the State of Utah will be the Director, Division of Oil, Gas, and Mining, Department of Natural Resources.

Article V. Award

The National Park Service will transfer funding for the actual abandoned mine and reclamation construction costs to the DOGM annually. Funding transferred is not to exceed \$100,000 annually. The NPS agrees to provide financial assistance in the amount of \$28,000 in 1988. Because this is a multi-year agreement, any financial assistance beyond the current fiscal year is contingent on appropriations of funds by congress. The transfer and obligation of funds for mine closure will be done in accordance with all Federal contracting procedures under the oversight of the Park Superintendent or, in the case of a multi-park project, the Rocky Mountain Regional Director.

Article VI. Termination

This interagency agreement shall remain in effect for five years, or until terminated by either party upon thirty (30) days written notice to the other party.


Article VII. General Provisions

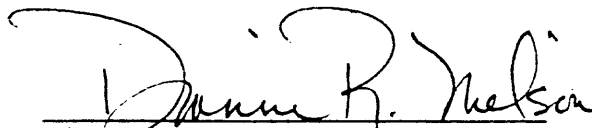
The NPS general provision for cooperative agreements (enclosed) are included in this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date written below.

NATIONAL PARK SERVICE:

DIVISION OF OIL, GAS & MINING:

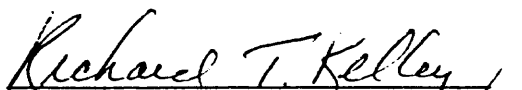
for 
Regional Director
Rocky Mountain Region
National Park Service

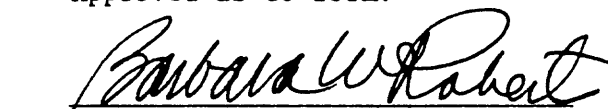

Director
Division of Oil, Gas & Mining
Department of Natural Resources
State of Utah

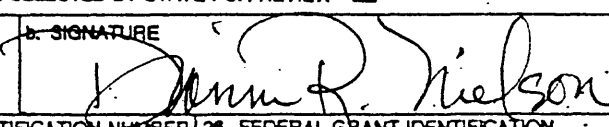
9/21/88
Date

9-23-88
Date

Approved as to form:


Contracting Officer
Rocky Mountain Region 9/28/88
National Park Service


Utah Assistant Attorney General

1. TYPE OF SUBMISSION (Mark appropriate box)		2. APPLICANT IDENTIFIER		3. DATE		4. APPLICATION IDENTIFIER		5. DATE ASSIGNED	
<input type="checkbox"/> NOTICE OF INTENT (OPTIONAL)	<input type="checkbox"/> PREAPPLICATION	<input checked="" type="checkbox"/> APPLICATION	AMR-100	Year month day	NOTE: TO BE ASSIGNED BY STATE	Year month day	UT880923-010	Year month day	
				19 88 09 23		19 88 09 23			
Leave Blank									
6. LEGAL APPLICANT/RECIPIENT						7. EMPLOYER IDENTIFICATION NUMBER (EIN)			
a. Applicant Name Abandoned Mine Reclamation Program						b. PRO-GRAM (From CFDA)			
b. Organization Unit Division of Oil, Gas & Mining						a. NUMBER 1 5 2 5 2			
c. Street/P.O. Box 355 W. North Temple, 3 Triad Center, Suite 350						b. TITLE			
d. City Salt Lake City						Abandoned Mine Lands			
e. State Utah									
f. Contact Person (Name & Telephone No.) Mary Ann Wright (801) 538-5340									
8. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)						9. TYPE OF APPLICANT/RECIPIENT			
Cooperative Agreement between the Rocky Mountain Region, National Park Service and the Division of Oil, Gas & Mining to reclaim abandoned mine sites in Canyonlands National Park						A—State B—Interstate C—Substate D—County E—City F—School District G—Special Purpose District H—Community Action Agency I—Higher Educational Institution J—Indian Tribe K—Other (Specify):			
9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)						10. ESTIMATED NUMBER OF PERSONS BENEFITING			
Canyonlands National Park						200,000			
11. TYPE OF ASSISTANCE						12. TYPE OF APPLICATION			
A—Basic Grant B—Supplemental Grant C—Loan D—Insurance E—Other						A—New B—Renewed C—Revision D—Continuation E—Augmentation			
Enter appropriate letter(s) [E]						Enter appropriate letter [A]			
13. PROPOSED FUNDING						14. CONGRESSIONAL DISTRICTS OF:			
a. FEDERAL \$ 28,000 .00						a. APPLICANT 2			
b. APPLICANT .00						b. PROJECT 3			
c. STATE .00						15. PROJECT START DATE Year month day			
d. LOCAL .00						16. PROJECT DURATION 36 Months			
e. OTHER .00						17. DATE DUE TO FEDERAL AGENCY 19 88 09 26			
f. Total \$ 28,000 .00									
19. FEDERAL AGENCY TO RECEIVE REQUEST National Park Service						20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER			
a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Abandoned Mine Lands						b. ADMINISTRATIVE CONTACT (IF KNOWN) Chris Turke			
c. ADDRESS National Park Service, Rocky Mountain Region 12795 West Alameda Parkway, Lakewood, Colorado 80225						21. REMARKS ADDED			
22. THE APPLICANT CERTIFIES THAT: To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.						a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE 9/26/88 and 10/11/88			
						b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW			
23. CERTIFYING REPRESENTATIVE						24. SIGNATURE			
a. TYPED NAME AND TITLE Dianne R. Nielson, Director Division of Oil, Gas & Mining						b. SIGNATURE 			
25. APPLICATION RECEIVED 19						26. FEDERAL APPLICATION IDENTIFICATION NUMBER			
27. ACTION TAKEN						28. FUNDING			
a. AWARDED b. REJECTED c. RETURNED FOR AMENDMENT d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE e. DEFERRED f. WITHDRAWN						a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00			
29. ACTION DATE 19						30. STARTING DATE 19			
31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)						32. ENDING DATE 19			
						33. REMARKS ADDED			
						Yes No			

GENERAL PROVISIONS

1. DEFINITIONS

Throughout the assistance agreement, the following terms, in so far as they are used, shall have the meanings set forth below:

- a. The term "Head of the Agency" or "Secretary" means the Secretary, or any Assistant Secretary of the United States Department of the Interior; and the term "his duly authorized representative" means any person or persons or Board authorized to act for the head of the Agency or the Secretary.
- b. The term "Department" means the United States Department of the Interior (USDI).
- c. The terms "Agency" or "Service" means the U.S. National Park Service (NPS).
- d. The term "Agreement Officer" (AO) or "Signing Official" (SO) means any person authorized to execute the agreement on behalf of the Service and includes, except as otherwise provided in the agreement, the authorized representative of the Signing Official acting within the limits of his authority.
- e. The term "Government Technical Representative" (GTR) means the SO's or AO's authorized representative responsible for the technical administration of the agreement, the evaluation of performance under the agreement, the acceptance of technical reports, and for such other specific responsibilities as may be stipulated in various provisions of the agreement.
- f. The term "Recipient" includes the following:
 - (1) States, local governments or Federally recognized Indian tribal governments as defined in OMB Circular A-102.
 - (2) Nonprofit organizations including public and private institutions of higher education, public and private hospitals and other quasi public and private nonprofit organizations as further described in OMB Circular A-110.
 - (3) Commercial organizations are organizations which are not otherwise included among those specified in OMB Circulars A-102 or A-110; international organizations; or businesses organized for profit.
- g. The term "Principal Investigator" (PI) means the individual, also known as the Project Director (PD), designated by the recipient and approved by NPS, who will perform or direct the effort of the recipient under the agreement.
- h. The term "Cooperative Agreement" means the legal instrument between the Service and the recipient which provides for the transfer of Federal resources to the recipient to accomplish a public purpose activity for which substantial involvement between the parties is anticipated during performance.
- i. The acronym "OMB" means Office of Management and Budget.
- j. The acronym "FAR" means Federal Acquisition Regulations.

2. ALLOWABLE COSTS - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

- a. Payments up to the amount specified in the assistance agreement shall be made only for costs determined by the SO to be allowable, allocable and reasonable in conducting the work under the agreement in accordance with its terms and with the following cost principles:
 - (1) OMB Circular A-21 shall be applicable to educational institutions.
 - (2) OMB Circular A-87 shall be applicable to state and local governments and federally recognized Indian tribal governments.
 - (3) OMB Circular A-122 shall be applicable to other non-profit organizations.
 - (4) Federal Acquisition Regulations (FAR) 31.2 shall be applicable to all other recipients.
- b. Expenditures requiring prior written approval from the SO are found in the applicable Federal cost principles or NPS policy and are summarized below:
 - (1) Purchase or rental of any item of general purpose equipment having a unit cost of \$300 or more; and all items of office equipment, regardless of cost, if not itemized in the approved budget.
 - (2) Purchase or rental of any item of special purpose equipment (used for research, medical, scientific, or other technical activities) having a unit cost of \$1,000 or more if not itemized in the approved budget.
 - (3) Insurance on Federal government-owned equipment unless required or approved and maintained under the terms of the agreement.
 - (4) Personnel movement of a special or mass nature not itemized in the approved budget.

- (3) Foreign travel (each separate trip).
- (6) Domestic travel when not included in the approved budget and when the cumulative travel expenditures will exceed the approved travel budget by \$500 or 25 percent, whichever is greater.
- (7) Expenditures for consultant services not itemized in the approved budget.
- (8) Subcontracts not itemized in the approved budget.
- (9) Expenditures for the purchase or lease of any interest in real property.

c. The NPS may provide in advance for scheduled apparent allowable costs to be incurred or will reimburse apparent allowable costs accrued by the recipient up to the maximum amount of the Federal assistance payable for the period of performance. However, such provision of any cost pursuant to the clause shall not constitute a final determination by NPS of the allowability of such cost and shall not constitute a waiver of any violation of the terms of the assistance agreement committed by the recipient. NPS shall make a final determination as to allowability only after final audit is completed, if required, or at the time of final payment.

3. **PAYMENT REQUIREMENTS** - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. Payments can be made to recipients through a letter-of-credit, an advance by Treasury check, or a reimbursement by Treasury check. The following definitions apply for the purpose of this clause:

- (1) Letter-of-Credit - A letter-of-credit is an instrument certified by an authorized official of a Federal sponsoring agency that authorizes a recipient to draw funds when needed from the Treasury, through a Federal Reserve bank and the recipient's commercial bank, in accordance with the provisions of Treasury Circular No. 1075, as revised.
- (2) Advance by Treasury check - An advance by Treasury check is a payment made by a Treasury check to a recipient upon its request before outlays are made by the recipient, or through the use of predetermined payment schedules.
- (3) Reimbursement by Treasury check - A reimbursement by Treasury check is a Treasury check paid to a recipient upon request for reimbursement from the recipient.

b. Except for construction agreements for which optional payment methods are authorized, as described in paragraph d, the letter-of-credit method shall be used by NPS if all of the following conditions exist:

- (1) If there is or will be a continuing relationship between a recipient and NPS for at least a 12-month period and the total amount of advance payments expected to be received within that period from NPS is \$120,000 or more as prescribed by Treasury Circular No. 1075.
- (2) If the recipient has established or demonstrated to NPS the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the recipient.
- (3) If the recipient's financial management system meets the prescribed standards for fund control and accountability.

c. The method of advancing funds by Treasury check shall be used in accordance with the provisions of Treasury Circular No. 1075, when the recipient meets all of the requirements specified in paragraph b. above, except those in subparagraph b.1.

d. The reimbursement by Treasury check method shall be the preferred method if the recipient does not meet the requirements specified in subparagraphs b.2. and b.3. above. NPS may require that this method be used on any construction project, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, NPS shall make payment within 30 days after receipt of the billing, unless the billing is improper. With respect to subcontractors, recipients shall not be reimbursed for amounts that are to be withheld to assure satisfactory completion of the work. These amounts will be paid when recipients make final payment including amounts withheld.

e. When the letter-of-credit procedure is used, the recipient shall be issued one consolidated letter-of-credit whenever possible to cover anticipated cash needs for all agreements awarded by NPS. Likewise, to the extent possible, when the advance by Treasury check method is used, advances should be consolidated (pooled) for all agreements made by NPS.

f. NPS shall not withhold payments for proper charges made by recipients at any time during the project or program period unless (a) a recipient has failed to comply with the program objectives, award conditions, or Federal reporting requirements; or (b) the recipient is indebted to the United States, and collection of the indebtedness will not impair accomplishment of the objectives of a project or program sponsored by the United States.

Under such conditions, NPS may, upon reasonable notice, inform the recipient that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

4. BONDING AND INSURANCE - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the performance of construction or facility improvements]

a. Except as otherwise required by law, a grant or other agreement that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, NPS may accept the bonding policy and requirements of the grantee provided NPS has made a determination that the Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 20 percent of the bid price - The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price - A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price - A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

b. Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, NPS, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

c. NPS may require adequate fidelity bond coverage where the recipient has no coverage and the bond is needed to protect the Government's interest.

d. Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

5. CASH DEPOSITORIES - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the advancement of Federal funds]

a. If funds are to be advanced under a letter-of-credit agreement with the recipient which provides that draw downs will be made when the recipient's checks are presented to the bank for payment, the recipient shall establish a separate bank account as the depository for such funds.

b. Any moneys advanced to a recipient which are subject to the control or regulation of the United States or any of its officers, agents or employees (public moneys as defined in Treasury Circular No. 176, as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

c. Consistent with the national goal of expanding the opportunities for minority business enterprises, recipients and subrecipients are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members).

6. RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements with primary recipients and to grants or other agreements awarded by the primary recipients to subrecipients performing substantive work].

a. Financial records, supporting documents, statistical records, and all other records pertinent to an agreement shall be retained for a period of 3 years, with the following qualifications:

(1) If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(2) Records for nonexpendable property acquired with Federal funds shall be retained for 3 years after its final disposition.

(3) When records are transferred to or maintained by NPS, the 3-year retention requirement is not applicable to the recipient.

b. The retention period starts from the date of the submission of the final expenditure report or final payment, whichever occurs last.

c. Recipient organizations may be authorized by NPS, to substitute microfilm copies in lieu of original records.

d. NPS shall request transfer of certain records to its custody from recipient organizations when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, NPS may make arrangements with recipient organizations to retain any records that are continuously needed for joint use.

e. The Director of NPS and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient organization and their subrecipients to make audits, examinations, excerpts and transcripts.

7. **PROGRAM INCOME** - (OMB Circulars A-102/A-110) - [This clause is applicable if program income, as defined below, is anticipated from projects financed in whole or in part with Federal funds]

- a. Recipient organizations shall account for program income resulting from projects financed in whole or in part with Federal funds. Program income represents gross income earned by the recipient from the Federally supported activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.
- b. Interest earned on advances of Federal funds shall be remitted to NPS except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Public Law 90-577) and tribal organizations pursuant to sections 102, 103, or 104 of the Indian Self Determination Act (Public Law 93-638).
- c. Proceeds from the sale of real and personal property either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the clause entitled Property Management Standards.
- d. Unless the agreement provides otherwise, recipients shall have no obligation to the Federal Government with respect to royalties received as a result of copyrights or patents produced under the agreement.
- e. All other program income earned during the project period shall be retained by the recipient and, in accordance with the agreement, shall be:
 - (1) Added to funds committed to the project by NPS and recipient organization and be used to further eligible program objectives;
 - (2) Used to finance the non-Federal share of the project when approved by NPS; or
 - (3) Deducted from the total project costs in determining the net costs on which the Federal share of costs will be based.
- f. State, local or Federally recognized Indian tribal governments shall record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of project transactions when such revenues are specifically earmarked for a project in accordance with assistance agreements.

8. **COST SHARING AND MATCHING** - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements if the recipient, subrecipient or third parties are required to make cash or in-kind contributions to satisfy cost sharing and matching requirements of the NPS]

- a. The following definitions apply for the purpose of this clause:
 - (1) Project costs - Project costs are all allowable costs (as set forth in the applicable Federal cost principles) incurred by a recipient and the value of the in-kind contributions made by the recipient or third parties in accomplishing the objectives of the agreement during the project or program period.
 - (2) Cost sharing and matching - In general, cost sharing and matching represent that portion of project or program costs not borne by the Federal Government. Any minimum percentage for matching share provided by program legislation and matching share requirements are included in the assistance agreement.
 - (3) Cash contributions - Cash contributions represent the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal third parties. When authorized by Federal legislation, Federal funds received from other agreements may be considered as recipient's cash contributions.
 - (4) In-kind contributions - In-kind contributions represent the value of noncash contributions provided by the recipient and non-Federal third parties. Only when authorized by Federal legislation, may property purchased with Federal funds be considered as the recipient's in-kind contributions. In-kind contributions may be in the form of charges for real property and non-expendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.
- b. General guidelines for computing cost sharing or matching are as follows:
 - (1) Cost sharing or matching may consist of:
 - (a) Charges incurred by the recipient as project costs. (Not all charges require cash outlays by the recipient during the project period; examples are depreciation and use charges for buildings and equipment.)
 - (b) Project costs financed with cash contributed or donated to the recipient by other non-Federal public agencies and institutions, and private organizations and individuals, and
 - (c) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and institutions, and private organizations and individuals.
 - (2) All contributions, both cash and in-kind shall be accepted as part of the recipient's cost sharing and matching when such contributions meet all of the following criteria:
 - (a) Are verifiable from the recipient's records;
 - (b) Are not included as contributions for any other Federally-assisted program;
 - (c) Are necessary and reasonable for proper and efficient accomplishment of project objectives;
 - (d) Are types of charges that would be allowable under the applicable cost principles;

- (e) Are not paid by the Federal Government under another assistance agreement (unless the agreement is authorized by Federal law to be used for cost sharing or matching);
- (f) Are provided for in the approved budget when required by the Federal agency; and
- (g) Conform to other provisions of this clause.

c. Values for recipient in-kind contributions will be established in accordance with the applicable cost principles.

d. Specific procedures for the recipients in establishing the value of in-kind contributions from non-Federal third parties are set forth below.

(1) Valuation of volunteer services - Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(a) Rates for volunteer services - Rates for volunteers should be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates should be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved.

(b) Volunteers employed by other organizations - When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are in the same skill for which the employee is normally paid.

(2) Valuation of donated, expendable personal property - Donated, expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the market value of the property at the time of the donation.

(3) Valuation of donated, nonexpendable personal property, buildings, and land or use thereof.

(a) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the agreement as follows:

(i) If the purpose of the agreement is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(ii) If the purpose of the agreement is to support activities that require the use of equipment, buildings or land, depreciation or use charges to charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be allowed provided that the NPS has approved the charges.

(b) The value of donated property will be determined in accordance with the usual accounting policies of the recipient with the following qualifications:

(i) Land and Buildings - The value of donated land and buildings may not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the recipient.

(ii) Nonexpendable personal property - The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(iii) Use of space - The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal or comparable space and facilities in a privately-owned building in the same locality.

(iv) Loaned equipment - The value of loaned equipment shall not exceed its fair rental value.

e. The following requirements pertain to the recipient's supporting records for in-kind contributions from non-Federal third parties:

(1) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its employees.

(2) The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented.

9. STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. Recipient's financial management systems shall provide for:

(1) Accurate, current and complete disclosure of the financial results of each Federally sponsored project or program in accordance with the reporting requirements set forth in the clause entitled Financial Reporting Requirements.

(2) Records that identify adequately the source and application of funds for Federally sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays and income.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(4) Comparison of actual outlays with budget amounts for each agreement.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient, whenever funds are advanced by NPS. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements. Advances made by primary recipient organizations (those which receive payments directly from NPS) to subrecipients shall conform substantially to the same standards of timing and amount as apply to advances by NPS to primary recipient organizations.

(6) Procedures for determining the reasonableness, allowability and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the agreement.

(7) Accounting records that are supported by source documentation.

(8) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

b. Primary recipients shall require subrecipients to adopt the standards in paragraph a. above except for the requirement in paragraph a.(1) regarding reporting forms and frequencies prescribed in the clause entitled Financial Reporting Requirements.

10. FINANCIAL REPORTING REQUIREMENT - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. The following definitions apply for purposes of this clause:

(1) Accrued expenditures - Accrued expenditures are the charges incurred by the recipient during a given period requiring the provision of funds for: (a) goods and other tangible property received; (b) services performed by employees, contractors, subrecipients, and other payees, and (c) other amounts becoming owed under programs for which no current services or performance is required.

(2) Accrued income - Accrued income is the sum of (a) earnings during a given period from (i) services performed by the recipient; and (ii) goods and other tangible property delivered to purchasers; and (b) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(3) Federal funds authorized - Federal funds authorized are the total amount of Federal funds obligated by NPS for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior fiscal years when permitted by law or NPS regulation.

(4) In-kind contributions - In-kind contributions are defined in the clause entitled Cost Sharing and Matching.

(5) Obligations - Obligations are the amounts of orders placed, contracts and subagreements awarded, services received, and similar transactions during a given period that will require payment by the recipient during the same or a future period.

(6) Outlays - Outlays or expenditures represent charges made to the project or program. They are to be reported on an accrual basis. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(7) Program income - Program income is defined in the clause entitled Program Income. It is to be reported on an accrual basis.

(8) Unobligated balance - The unobligated balance is the portion of the funds authorized by NPS that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(9) Unliquidated obligations - For reports prepared on an accrued expenditure basis, unliquidated obligations represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

b. The recipient shall utilize the following forms for reporting financial information:

(1) Financial Status Report (SF-269) - For all non-construction projects, the recipient shall submit an original and two copies of this report 30 days after the completion of each quarter of the project with the exception that the final Financial Status Report shall be due 90 days after project completion. Extensions to reporting due dates may be granted upon request. The report shall be on an accrual basis; however, if the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such information through best estimates based on an analysis of the documentation on hand.

(2) Federal Transactions Report (SF-272) - In the event funds are advanced to recipients, the recipient shall submit an original and two copies of a Federal Cash Transaction Report 15 days following the end of each quarter.

c. The recipient shall utilize the following forms for requesting advances and reimbursements:

- (1) Request for Advance or Reimbursement (SF-270) - For all non-construction projects when a letter of credit is not used, the recipient shall submit an original and two copies of this form on a monthly basis.
- (2) Outlay Report and Request for Reimbursement for Construction Programs (SF-271) - For all construction projects when a letter of credit has not been authorized, the recipient shall submit an original and two copies of this form on a monthly basis.

d. When the NPS needs additional information in using these forms or more frequent reports, the following shall be observed:

- (1) When additional information is needed to comply with legislative requirements, NPS shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.
- (2) When necessary to meet specific program needs, NPS shall submit the proposed reporting requirements to the Financial Management Branch, Budget Review Division, Office of Management and Budget for approval prior to submission of the reports for clearance under the provisions of 5 CFR Part 1320.
- (3) When NPS has determined that a recipient's accounting system does not meet the requirements contained in the clause entitled Standards for Financial Management Systems, additional pertinent information to further monitor agreements may be obtained upon written notice to the recipient until such time as the system is brought up to standard.

e. NPS shall reserve the option of shading out any line item on any report that is unnecessary for decision-making purposes.

f. NPS shall accept the identical information from the recipients in machine useable format or computer printouts in lieu of prescribed formats.

11. MONITORING AND REPORTING PROGRAM PERFORMANCE - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements]

a. Recipients shall monitor the performance under agreements and, where appropriate, ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each agreement as set forth in the approved application or award document.

b. Recipients shall submit a performance report (technical report) for each agreement that briefly presents the following information for each program, function, or activity involved:

- (1) A comparison of actual accomplishments with the goals established for the period, the findings of the investigator, or both. If the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.
- (2) Reasons why established goals were not met.
- (3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

c. Recipients shall submit the performance or technical reports quarterly with the Financial Status Report (or Request for Advance or Reimbursement if used in lieu of the Financial Status Report); the final technical or performance report shall be submitted 90 days after completion of the project.

d. Between the required performance reporting dates, events may occur that have significant impact upon the project or program. In such instances, the recipient shall inform the SO as soon as the following types of conditions become known.

- (1) Problems, delays, or adverse conditions that will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.
- (2) Favorable developments or events that enable time schedules to be met sooner than anticipated or more work units to be produced than originally projected.

e. If any performance review conducted by the recipient discloses the need for change in the budget estimates, the recipient shall submit a request for budget revision.

12. REVISION OF FINANCIAL PLANS (OMB Circulars A-102/A-110) [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. The financial plan is the financial expression of the project or program as approved during the application and/or award process. It may include both the Federal and non-Federal share. It should be related to performance for program evaluation purposes whenever appropriate and required.

b. For nonconstruction awards, recipients shall immediately request approvals from Federal sponsoring agencies when there is reason to believe that a revision will be necessary for the following reasons:

- (1) Changes in the scope or the objective of the project or program.
 - (2) The need for additional Federal funding.
 - (3) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs or vice versa.
 - (4) The expenditures require approval in accordance with the applicable provisions of OMB Circular A-21, "Cost Principles for Educational Institutions," OMB Circular A-87, "Cost Principles for State and Local Governments," OMB Circular A-122, "Cost Principles for Non Profit Organizations," or Federal Acquisition Regulations (FAR) 31.2, "Cost Principles...with Commercial Organizations."
 - (5) Recipients plan to transfer funds allotted for training allowances (direct payments to trainees) to other categories of expense.
- c. None of the substantive programmatic work under an agreement may be subcontracted or transferred without prior approval of NPS. This provision general support services.
- d. The recipient may not transfer funds among direct cost categories for awards in which the Federal share exceeds \$100,000 when the cumulative amount of such transfers exceeds or is expected to exceed 5 percent of the total budget as last approved. The same criteria shall apply to the cumulative amount of transfer among programs, functions, and activities when budgeted separately for an award, except that the NPS shall permit no transfer that would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.
- e. For construction awards, recipients shall request prior approvals promptly from NPS for budget revisions wherever:
- (1) The revision results from changes in the scope or the objective of the project or program, and
 - (2) The revision increases the budget amounts of Federal funds needed to complete the project.
- f. When an agreement provides support for both construction and nonconstruction work, the recipient shall request approval from NPS prior to making any fund or budget transfers between the two types of work supported.
- g. For both construction and nonconstruction awards, the recipients shall notify the NPS promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient by more than \$5,000 or 5 percent of the Federal award, whichever is greater.
- h. When requesting approval for budget revisions, recipients shall use either the budget forms that were used in the application or a letter detailing the revisions.
- i. Within 30 calendar days from the date of receipt of the request for budget revisions, NPS shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, NPS shall inform the recipient in writing of the date when the recipient may expect the decision.
- j. NPS shall not be obligated to reimburse the recipient for outlays (costs) in excess of the Federally funded amount of the assistance agreement unless and until the SO executes a modification which increases the Federally funded amount. The Federally funded amount is the amount obligated under the agreement which may be less than or equal to the budgeted Federal share of the agreement.
13. CLOSEOUT PROCEDURES - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements]
- a. The following definitions shall apply for the purpose of this clause.
- (1) Closout - The closeout of a grant or other agreement is the process by which a NPS determines that all applicable administrative actions and all required work of the agreement have been completed by the recipient and the NPS.
 - (2) Date of completion - The date of completion is the date on which all work under the agreement is completed or the date on the award document, or any supplement or amendment thereto, on which NPS sponsorship ends.
 - (3) Disallowed costs - Disallowed costs are those charges to an agreement that the NPS or its representative determines to be unallowable, in accordance with the applicable Federal cost principles or other conditions contained in the agreement.
- b. The parties shall close out assistance agreements in accordance with the following procedures:
- (1) Upon request, NPS shall make prompt payments to a recipient for allowable reimbursable costs under the agreement being closed out.
 - (2) The recipient shall immediately refund any balance of unobligated (unencumbered) cash that NPS advanced or paid and that is not authorized to be retained by the recipient.
 - (3) The NPS shall obtain from the recipient within 90 calendar days after the date of completion of the agreement all financial, performance, and other reports required as the condition of the agreement. The agency may grant extensions when requested by the recipient.

- (4) When authorized by the agreement, NPS shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.
- (5) The recipient shall account for any property acquired with Federal funds, or received from the Government in accordance with the provisions of the clause entitled Property Management Standards.
- (6) In the event a final audit has not been performed prior to the closeout of the agreement, NPS shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.
- (7) The recipient shall complete and submit a final report in compliance with the clause entitled Standard Patent Rights within 90 calendar days after the date of completion. The form used shall be Department of the Interior (DI) Form 1216, entitled "Summary Report of Inventions and Subcontracts".

14. SUSPENSION AND TERMINATION PROCEDURES - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements]

a. The following definitions shall apply for the purpose of this clause.

- (1) Termination - The termination of an agreement means the cancellation of Federal sponsorship, in whole or in part under an agreement at any time prior to the date of completion.
- (2) Suspension - The suspension of an agreement is an action by NPS that temporarily suspends Federal sponsorship, pending corrective action by the recipient or pending a decision to terminate the agreement by NPS.

b. If the recipient fails to comply with the terms of the agreement, the SO may, on reasonable notice to the recipient, suspend the agreement, and withhold further payments and prohibit the recipient from incurring additional obligations of funds, pending corrective action by the recipient; or decide to terminate in accordance with paragraph c. All necessary and proper costs that the recipient could not reasonably avoid during the period of suspension shall be allowed provided that they meet the provisions of the applicable cost principles.

c. This agreement may be terminated as follows:

- (1) Termination for cause - The SO may terminate any agreement in whole or in part at any time before the date of completion, whenever it is determined that the recipient has failed to comply with the conditions of the agreement. The SO shall promptly notify the recipient in writing of the determination and the reasons for the termination, together with the effective date. The recipient shall not incur new obligations after the effective date of the termination notice and shall cancel as many outstanding obligations as possible. Payments made to recipients or recoveries by NPS under agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties.
- (2) Termination for convenience - Agreements may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. In the event that both parties cannot agree, the SO reserves the right to unilaterally terminate the assistance agreement for the Government's convenience. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The SO shall allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.

d. The parties shall promptly settle the terminated agreement in accordance with the applicable requirements of the clause entitled Close Out Procedures. In addition, the parties shall execute a modification setting forth the terms and conditions of the final settlement as a result of the termination of the agreement.

15. PROPERTY MANAGEMENT STANDARDS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving government-furnished property or recipient-acquired property for which the costs will be reimbursed by the NPS]

a. The recipient and approved subrecipients shall observe the standards governing the management of property prescribed by this clause. The recipient may use its own property management standards and procedures provided it observes the provisions of this clause.

b. The following definitions apply for the purpose of this clause:

- (1) Real property - Real property means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.
- (2) Personal property - Personal property of any kind except real property. It may be tangible--having physical existence, or intangible--having no physical existence, such as patents, inventions and copyrights.
- (3) Nonexpendable personal property - Nonexpendable personal property means tangible personal property having a useful life of more than 1 year and an acquisition cost of \$300 or more per unit except that recipients subject

to Cost Accounting Standards Board regulations may use the CASB standard of \$500 per unit and useful life of 2 years. A recipient may use its own definition of nonexpendable personal property provided that the definition would at least include all tangible personal property as defined above.

(4) Expendable personal property - Expendable personal property refers to all tangible personal property other than nonexpendable property.

(5) Excess property - Excess property means property under the control of a Federal agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(6) Acquisition cost of purchased nonexpendable personal property - Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property useable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(7) Exempt property - Exempt property means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in subparagraph f.(1) below. Such unconditional vesting of title will be pursuant to any Federal legislation that provides NPS with adequate authority.

c. If real property is acquired as a requirement of this agreement, the following shall apply:

(1) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project, as long as it is needed.

(2) The recipient shall obtain NPS approval for the use of real property in other projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under other Federally sponsored projects (i.e., grants or other agreements) or programs that have purposes consistent with those authorized for support by NPS.

(3) When the real property is no longer needed as provided in (1) and (2) above, the recipient shall request disposition instructions from NPS or its successor Federal sponsoring agency.

d. Federally-owned nonexpendable personal property - Title to Federally-owned property remains vested in the Federal government. Recipients shall submit annually an inventory listing of Federally-owned property in their custody to NPS. Upon completion of the agreement or when the property is no longer needed, the recipient shall report the property to NPS for further agency utilization.

e. Exempt property - When statutory authority exists, (e.g., P.L. 97-258) title to nonexpendable personal property acquired with project funds, shall be vested in the recipient upon acquisition unless it is determined that to do so is not in furtherance of the objectives of the NPS. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal government for its use or disposition except as provided in f.(1) below.

f. Other nonexpendable property - When other nonexpendable tangible personal property is acquired by a recipient with project funds, title shall not be taken by the Federal government but shall vest in the recipient subject to the following conditions:

(1) Right to transfer title - For items of nonexpendable personal property having a unit acquisition cost of \$1,000 or more, NPS reserves the right to transfer the title to the Federal government or to a third party.

(2) Use of other tangible nonexpendable property for which the recipient has title.

(a) The recipient shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the property in connection with its other Federally sponsored activities, in the following order of priority: (i) activities sponsored by the NPS; and (ii) activities sponsored by other Federal agencies.

(b) Shared use - During the time that nonexempt nonexpendable personal property is held for use on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by NPS; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal government, use on other activities not sponsored by the Federal government shall be permissible if authorized by NPS. User charges shall be considered if appropriate.

(3) Disposition of other nonexpendable property - When the recipient no longer needs the property as provided in f.(2) above, the property may be used for other activities in accordance with the following standards:

(a) Nonexpendable property with a unit acquisition cost of less than \$1,000 - The recipient may use the property for other activities without reimbursement to the Federal government or sell the property and retain the proceeds.

(b) Nonexpendable personal property with a unit acquisition cost of \$1,000 or more - The recipient may retain the property for other uses provided that compensation is made to NPS. The amount of compensation

shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the recipient has no need for the property and the property has further use value, the recipient shall request disposition instructions from NPS.

(4) Property management standards for nonexpendable property - The recipient's property management standards for nonexpendable personal property shall include the following procedural requirements:

(a) Property records shall be maintained accurately and shall include:

- (i) A description of the property.
- (ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.
- (iii) Source of the property, including agreement number.
- (iv) Whether title vests in the recipient or the NPS;
- (v) Acquisition date (or date received, if the property was furnished by the NPS) and cost.
- (vi) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the NPS).
- (vii) Location, use and condition of the property and the date the information was reported.
- (viii) Unit acquisition cost.
- (ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the NPS for its share.

(b) Property owned by the NPS must be marked to indicate Federal ownership.

(c) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(d) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify NPS.

(e) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(f) Where the recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

g. Expendable personal property - Title to expendable personal property shall vest in the recipient upon acquisition. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value, upon termination or completion of the agreement, and the property is not needed for any other Federally sponsored project or program, the recipient shall retain the property for use on non Federally sponsored activities, or sell it, but must in either case, compensate NPS for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

h. Intangible property.

(1) Inventions and patents - If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal government, such fact shall be promptly and fully reported to NPS. Unless there is a prior agreement between the recipient and NPS on disposition of such items, the NPS shall determine whether protection on the invention or discovery shall be sought. NPS will also determine how the rights in the invention or discovery--including rights under any patent issued thereon--shall be allocated and administered in order to protect the public interest consistent with current Government Patent Policy.

(2) Copyrights - Except as otherwise provided in the terms and conditions of the agreement, the author or the recipient organization is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Federal agreement, but NPS shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

i. Excess personal property - When title to excess property is vested in recipients, such property shall be accounted for and disposed of in accordance with disposition instructions from NPS.

16. PROCUREMENT STANDARDS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving recipient procurement of supplies, equipment, construction or other services and reimbursement with Federal funds]

a. The standards contained in this clause do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to NPS regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of an agreement. These include disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have property jurisdiction.

b. Recipients may use their own procurement policies and procedures. However, all recipients shall adhere to the standards set forth in this clause and applicable Federal law.

c. Code of conduct - The recipient shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using Federal funds. No employee, officer or agent shall participate in the selection, award or administration of a contract in which

Federal funds are used, where, to his knowledge, he or his immediate family, partners, or organization in which he or his immediate family or partner has a financial interest or with whom he is negotiating or has any arrangement concerning prospective employment. The recipients' officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

d. Procurement transactions - All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the bidder/offeree whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeree must fulfill in order for his bid/offer to be evaluated by the recipient. Any and all bids/offers may be rejected when it is in the recipient's interest to do so.

e. Procurement procedures - All recipients shall establish procurement procedures that provide for, at a minimum, the following procedural requirements.

(1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Consideration should be given to consolidation or breaking out to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which would be the most economical, practical procurement.

(2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerees shall be clearly specified.

(3) Positive efforts shall be made by the recipients to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Federal funds.

(4) The type of procuring instruments used, e.g., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(6) Review and approval by the SO of the recipient's proposed contracts and related procurement documents is required when the procurement is: (a) expected to exceed \$10,000 and is to be awarded without competition or only one offer is received, (b) expected to exceed \$10,000 and specifies a "brand name" product, or (c) the recipient's procurement procedures or operations fail to comply with this clause. The provisions of this subparagraph are waived in the event the recipient's procurement system has been certified in accordance with the Office of Federal Procurement Policy.

(7) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. Costs or prices based on estimated costs for subcontract under the agreement shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with applicable cost principles.

(8) Procurement records and files for purchases in excess of \$10,000 shall include the following:

- (a) Basis for contractor selection;
- (b) Justification for lack of competition when competitive bids or offers are not obtained;
- (c) Basis for award cost or price.

(9) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

f. Contracting with Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms.

(1) It is national policy to award a fair share of contracts to small and minority business firms, women-owned businesses and labor surplus area firms. The recipient agrees to use its best efforts to carry out this policy in the award of subcontracts or other agreements to the fullest extent consistent with the efficient performance of this assistance agreement.

(2) **Definitions**

(a) The term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and in relevant regulations promulgated pursuant thereto.

(b) The term minority firm ("small business concern owned and controlled by socially and economically disadvantaged individuals") shall mean a small business concern:

- (i) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially or economically disadvantaged individuals; and
- (ii) whose management and daily business operations are controlled by one or more of such individuals.

The recipient shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

(c) A "woman-owned business" concern means a business that is at least 51 percent owned by a woman or women that also control and operate it. "Control" in this context means being actively involved in the day-to-day management. "Women" mean all women business owners.

(d) The term "labor surplus area concern" means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

(3) Accordingly, recipients shall take steps to assure that such preference firms are utilized when possible as sources of suppliers, equipment, construction and services. Affirmative steps shall include the following:

- (a) Including qualified small and minority businesses on solicitation lists.
- (b) Assuring that small and minority businesses are solicited whenever they are potential sources.
- (c) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum small and minority business participation.
- (d) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.
- (e) Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, the Community Services Administration, the Office of Small and Disadvantaged Business Utilization of the Department of the Interior, and Business Utilization and Development Specialists of the U.S. National Park Service.

If any subcontracts are to be let, requiring the prime contractor to also take the affirmative steps in a through e above.

(4) Recipients shall take similar appropriate affirmative action in support of women's business enterprises.

(5) Recipient's are encouraged to procure goods and services from labor surplus areas.

(6) Where opportunities for subcontracting or other subagreements exist, the recipient shall submit a completed Department of the Interior (DI-1925) Minority Business Utilization Report within 10 days after the end of each fiscal year quarter. One copy shall be provided to the agreement signing official who awarded the agreement.

The requirement for submission of this form is a result of the U.S. Department of the Interior's implementation of Executive Order 12432, dated July 14, 1983, entitled "Minority Business Enterprise Development."

9. **Contract provisions** - The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. These provisions shall also be applied to subcontracts.

(1) Contracts in excess of \$25,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of \$10,000 shall contain suitable provisions for termination by the recipient including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded for more than \$100,000, recipients shall observe the bonding requirements provided in the clause entitled Bonding and Insurance.

(4) All contracts awarded by recipients and their contractors or subrecipients having a value of more than \$10,000, shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60).

(5) All contracts and subagreements in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Rick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to NPS.

(6) When required by the Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 3). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the SO.

(7) When required by the Federal program legislation, recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields that directly concern public health, safety or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the regulations issued by NPS and the recipient.

(9) All negotiated contracts (except those of \$25,000 or less) awarded by recipients shall include a provision to the effect that the recipient, NPS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions. Recipients shall require contractors to maintain all required records for 3 years after the recipient makes final payment and all pending matters are closed.

(10) Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported to NPS and the regional office of the Environmental Protection Agency.

(11) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163)

b. If the recipient is a State or local government or other entity as defined in OMB Circular A-102, it shall adhere to the following additional provisions:

In order to foster greater economy and efficiency, recipients are encouraged to enter into State and local intergovernmental agreements for procurements or use of common goods and services.

Procurements shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) competitive sealed bids (formal advertising); (c) competitive negotiation; (d) noncompetitive negotiation.

(1) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$25,000. Recipients shall comply with State or local small purchase dollar limits under \$25,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(a) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

- (i) A complete, adequate and realistic specification or purchase description is available.
 - (ii) Two or more responsible suppliers are willing and able to compete effectively for the recipient's business.
 - (iii) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.
- (b) If formal advertising is used for a procurement under an agreement, the following requirements shall apply:

- (i) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.
 - (ii) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.
 - (iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.
 - (iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.
 - (v) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.
- (3) In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under an agreement, the following requirements shall apply:

- (a) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.
 - (b) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.
 - (c) The recipient shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.
 - (d) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.
 - (e) Recipients may utilize competitive negotiation procedures for procurement of architectural/engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
- (4) Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising), or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- (a) The item is available only from a single source;
- (b) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;
- (c) NPS authorizes noncompetitive negotiation; or
- (d) After solicitation of a number of sources, competition is determined inadequate.

17A. AUDIT REQUIREMENTS - (OMB Circular A-110) - [This clause is applicable to all assistance agreements with institutions of higher education, hospitals and other nonprofit organizations involving the transfer of Federal funds]

a. Recipients' financial management systems shall provide for examinations in the form of audits or internal audits. Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3 of the U.S. General Accounting Office publication, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the agreements. It is not intended that each agreement awarded to the recipient be examined. Generally, examinations should be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance, with the terms and conditions of Federal agreements. Such tests would include an appropriate sampling of Federal agreements. Examinations will be conducted with reasonable frequency, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than every 2 years. The frequency of these examinations shall depend upon the nature, size and the complexity of the activity. These examinations do not relieve Federal agencies of their audit responsibilities, but may affect the frequency and scope of such audits.

b. The primary recipient shall require its subrecipients to adopt the above standards.

17b. AUDIT REQUIREMENTS - (OMB Circular A-128) - [This clause is applicable to all assistance agreements with State and local governments and Federally recognized Indian tribal governments]

a. Definitions - For the purposes of this clause the following definitions from the Single Audit Act apply:

- (1) "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out their audit responsibilities.
- (2) "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.
- (3) "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.
- (4) "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.
- (5) "Generally accepted government auditing standards" means the Standards for Audit of Government Organizations, Programs, Activities, and Functions, developed by the Comptroller General dated February 27, 1981.
- (6) "Independent auditor" means:
 - (a) An external State or local government auditor who meets the independent standards specified in generally accepted government auditing standards; or
 - (b) A public accountant who meets such independent standards.
- (7) "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:
 - (a) Resource use is consistent with laws, regulations, and policies;
 - (b) Resources are safeguarded against waste, loss, and misuse; and
 - (c) Reliable data are obtained, maintained and fairly disclosed in reports.
- (8) "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- (9) "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.
- (10) "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.
- (11) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State regional, or interstate entity that has governmental functions and any Indian tribe.
- (12) "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

b. Scope of audit - The Single Audit Act provides that:

- (1) The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.
- (2) Each audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives over \$25,000 in General Revenue Sharing funds in a fiscal year, it shall have an audit of the entire organization. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.
- (3) Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this clause. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of OMB Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospital(s) and Other Nonprofit Organizations."
- (4) The auditor shall determine whether:

- (a) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;
 - (b) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and
 - (c) The organization has complied with laws and regulations that may have a material effect upon each major Federal assistance program.
- c. Frequency of audit - Audits shall be made annually unless the State or local government has by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, concerning both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.
- d. Internal control and compliance reviews - The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.
- (1) Internal control review - In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:
 - (a) Test whether these internal control systems are functioning in accordance with prescribed procedures.
 - (b) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.
 - (2) Compliance review - The law also requires the auditor to determine whether the organization has complied with laws and regulations that have a material effect upon each major Federal assistance program.
 - (a) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.
 - (b) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.
 - (i) In making these tests of transactions, the auditor shall determine whether:
 - the amounts reported as expenditures were for allowable services, and
 - the records show that those who received services or benefits were eligible to receive them.
 - (ii) In addition to transaction testing, the auditor shall determine whether:
 - matching requirements, levels of effort and earmarking limitations were met,
 - Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and
 - amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost Principles for State and Local Governments" and OMB Circular A-102, "Uniform Requirements for Grants and Agreements with State and Local Governments."
 - (iii) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the Compliance Supplement for Single Audits of State and Local Governments, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.
 - (c) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

e. Subrecipients - State or local governments that receive Federal financial assistance and provide \$25,000 or more of it in a fiscal year to a subrecipient shall:

(1) Determine whether State or local subrecipients have met the audit requirements of this clause and whether subrecipients covered by OMB Circular A-110, "Uniform Requirements for Grants and Agreements with Universities, Hospitals, and Other Non-Profit Organizations," have met that requirement;

(2) Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this clause, OMB Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after issuance of the audit report in instances of noncompliance with laws and regulations;

(4) Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

(5) Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this clause.

f. Relation to other audit requirements.

(1) The provisions of this clause do not limit the authority of NPS to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

(2) NPS shall make any additional audits that are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this clause do not authorize any State or local government (or subrecipient thereof) to constrain, in any manner, NPS from carrying out such additional audits.

(3) If NPS makes or contracts for audits in addition to the audits made by recipients pursuant to this clause, it shall, consistent with other applicable laws and regulations, provide for the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

g. Illegal acts or irregularities - If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

h. Audit reports - Audit reports must be prepared at the completion of the audit and shall include the following:

(1) The audit report shall state that the audit was made in accordance with the provisions of this clause. The report shall be made up of at least:

(a) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance showing the total expenditures for each Federal assistance program as identified in the Catalog of Federal Domestic Assistance. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "Other Federal Assistance."

(b) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(c) The auditor's report on compliance containing:

- (i) A statement of positive assurance with respect to those items tested for compliance including compliance with laws and regulations pertaining to financial reports and claims for advances and reimbursements;
- (ii) Negative assurance on those items not tested;
- (iii) A summary of all instances of noncompliance; and
- (iv) An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

(2) The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

(3) All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report.

(4) In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report including a plan for corrective actions taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

(5) The reports shall be made available by the State or local government for public inspection within 30 days after completion of the audit.

- (6) In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.
- (7) Recipients of more than \$100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.
- (8) Recipients shall keep audit reports on file for three years from their issuance.
- i. Audit resolution - The cognizant agency shall be responsible for overseeing the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate solely to the programs of NPS will be the responsibility of the recipient and NPS. Alternate arrangements may be made on a case-by-case basis by agreement between the agencies concerned.
- Resolution shall be made within six months after receipt of the report by the departments and agencies. Corrective action should proceed as rapidly as possible.
- j. Audit workpaper and reports - Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.
- k. Audit costs - The cost of audits made in accordance with the provisions of this clause are allowable charges to Federal assistance programs.
- (1) The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A-87, "Cost Principles for State and Local Governments."
 - (2) Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds represent of total expenditures of the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.
- l. Sanctions - No cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this clause. In cases of continued inability or unwillingness to have a proper audit, NPS may consider other appropriate sanctions including:
- (1) withholding a percentage of assistance payments until the audit is completed satisfactorily,
 - (2) withholding or disallowing overhead costs, or
 - (3) suspending the Federal assistance agreement until the audit is made.
- m. Auditor selection - In arranging for audit services State and local governments shall follow the procurement standards prescribed in Clause 16. The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.
- n. Small and minority audit firms - Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded to fulfill the audit requirements of this clause. Recipients of Federal assistance shall take the following steps to further this goal:
- (1) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.
 - (2) Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned by socially and economically disadvantaged individuals.
 - (3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.
 - (4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.
 - (5) Encourage contracting with consortiums of small audit firms as described in paragraph (1) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.
 - (6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

17C. AUDIT REQUIREMENTS - (April 1984, Deviations, FAR 52.215.2) - [This clause is applicable to all assistance agreements with commercial organizations involving the transfer of Federal funds]

- a. Examination of costs - The recipient shall maintain--and the SO or representatives of the SO shall have the right to examine and audit--books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this agreement. This right of examination shall include inspection at all reasonable times of the recipient's facilities or parts of them, engaged in the performance of the agreement.
- b. Cost or pricing data - The SO or representatives of the SO shall have the right to examine and audit all books, records, documents and other data of the recipient (including computations and projections) related to pricing or performing the initial agreement or subsequent modifications in order to evaluate the accuracy, completeness and currency of the cost or pricing data.
- c. Reports - If the recipient is required to furnish cost, funding, or performance reports, the SO or representatives of the SO shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the recipient's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- d. Availability - The recipient shall make available at its office at all reasonable times the materials described in paragraphs a and b above, for examination, audit, or reproduction, as specified in the clause entitled Retention and Custodial Requirements for Records.

In addition, the recipient shall insert a clause containing all the terms of this clause, including this paragraph, in all subcontracts over \$100,000 under this agreement, altering the clause only as necessary to identify properly the contracting parties and the SO under the Government prime agreement.

18. STANDARD PATENT RIGHTS - (OMB Circular A-124) - [This clause is applicable to all assistance agreements for the performance of research and development work unless otherwise superseded in the Special Provisions of the individual assistance agreement]

a. Definitions

- (1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
- (2) "Subject Invention" means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement.
- (3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (5) "Small Business Firm" means a domestic small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size, standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-12, respectively, shall be used.
- (6) "Nonprofit Organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

b. Allocation of principal rights - The recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the recipient retains title, the Federal Government shall have a non-exclusive non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

c. Invention disclosure, election of title and filing of patent applications by recipient

- (1) The recipient shall disclose each subject invention to NPS within 2 months after the inventor discloses it in writing to recipient personnel responsible for patent matters. The disclosure to NPS shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the NPS, the recipient shall promptly notify NPS of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the recipient.
- (2) The recipient shall elect in writing whether or not to retain title to any such invention by notifying the NPS within 12 months of disclosure to the recipient, provided that in any case where publication, on sale, or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in

the United States, the period of election of title may be shortened by NPS to a date that is no more than 60 days prior to the end of the statutory period.

(3) The recipient shall file its initial patent application on an elected invention within 2 years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The recipient shall file patent applications in additional countries within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to NPS, election, and filing may, at the discretion of NPS, be granted.

d. Conditions when the Government may obtain title - The recipient shall convey to NPS, upon written request, title to any subject invention:

(1) If the recipient fails to disclose or elect the subject invention within the times specified in c. above, or elects not to retain title. NPS may only request title within 60 days after learning of the recipient's failure to report or elect within the specified times.

(2) In those countries in which the recipient fails to file patent applications with the times specified in c. above; provided, however, that if the recipient has filed a patent application in a country after the times specified in c. above, but prior to its receipt of the written request of NPS, the recipient shall continue to retain title in that country.

(3) In any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding, on a patent on a subject invention.

e. Minimum rights to recipient

(1) The recipient shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the recipient fails to disclose the subject invention within the times specified in c. above. The recipient's license extends to its domestic subsidiaries and affiliates, if any, within the organizational structure of which the recipient is a party and includes the right to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of NPS except when transferred to the successor of that party of the recipient's business to which the invention pertains.

(2) The recipient's domestic license may be revoked or modified by NPS to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and NPS licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NPS to the extent the recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in the foreign country.

(3) Before revocation or modification of the license, NPS shall furnish the recipient a written notice of its intention to revoke or modify the license, and the recipient shall be allowed 30 days (or such other time as may be authorized by the NPS for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with applicable NPS licensing regulations (if any) and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. Recipient action to protect the Government's interest

(1) The recipient agrees to execute or to have executed and promptly deliver to NPS all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the recipient elects to retain title, and (ii) convey title to NPS when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the recipient each subject invention made under agreement in order that the recipient can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by c.(1) above. The recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The recipient shall notify NPS of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The recipient agrees to include, within the specification any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the agreement by NPS number). The Government has certain rights in this invention."

g. Subcontracts - The recipient shall include this clause suitably modified to identify the parties, in all subagreements, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subrecipient shall retain all rights provided for the recipient in this clause, and the recipient shall not, as part of the consideration for awarding the subagreement obtain rights in the subrecipient's subject inventions.

h. Reporting utilization of subject inventions - The recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the recipient, and such other data and information as the agency may reasonably specify. The recipient also agrees to provide additional reports as may be requested by NPS in connection with any march-in proceedings undertaken by NPS in accordance with paragraph j. of this clause. To the extent data or information supplied under this section is considered by the recipient, its licensee or assignee to be privileged and confidential and is so marked, NPS agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

i. Preference for United States industry - Notwithstanding any other provision of this clause, the recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the NPS upon a showing by the recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in rights - The recipient agrees that with respect to any subject invention in which it has acquired title, NPS has the right in accordance with the procedures in OMB Circular A-124 to require the recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the recipient, assignee, or exclusive licensee refuses such a request, NPS has the right to grant such a license itself if NPS determines that:

- (1) Such action is necessary because the recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by paragraph i. of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. Special provisions for agreements with nonprofit organizations - If the recipient is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of NPS, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee shall be subject to the same provisions as the recipient);
- (2) The recipient may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:
 - (i) Five years from first commercial sale or use of the invention; or
 - (ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, NPS approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use shall not be deemed commercial sale or use with respect to a product of the invention shall not be deemed to end the exclusive period to different subsequent products covered by the invention.
- (3) The recipient shall share royalties collected on a subject invention with the inventor; and
- (4) The balance of any royalties or income earned by the recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, shall be utilized for the support of scientific research or education.

19. DATA COLLECTION - (Paperwork Reduction Act of 1980) - [This clause shall be applicable to all assistance agreements through which NPS sponsors the collection of information as defined in 5 CFR 1320.7]

a. OMB requires review and approval of plans and reports used to collect identical information from 10 or more persons (other than Federal employees) under assistance agreements sponsored by NPS. A collection of information undertaken by a recipient is considered to be "sponsored" by NPS only if:

- (1) The recipient is collecting information at the specific request of NPS; or
- (2) The terms and conditions of the agreement require specific approval by NPS of the collection of information or the collection procedures.

b. Unless otherwise specified, data collection conducted under the assistance agreement is the responsibility of the recipient, and NPS support of the project does not constitute NPS approval of the survey design, questionnaire content, or data collection procedures. The recipient shall not represent to respondents that such data is being collected for, or in association with, the NPS or any Federal agency without the specific written approval of such data collection plan or device by the NPS. However, this requirement is not intended to preclude mention of NPS support of the project in response to any inquiry or acknowledgement of such support in any publication of this data.

20. RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE - (This clause shall be applicable to all assistance agreements involving the accumulation of technical data or the development of computer software financed in whole or in part with Federal funds)

a. Definitions

- (1) The term "technical data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. Technical data does not include computer software, and it does not include financial, administrative, cost pricing, and management data, or other information incidental to contract administration.
- (2) Computer software - Computer programs and computer data bases.
- (3) Computer software documentation - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.
- (4) Unlimited rights means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.
- (5) Limited rights means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for emergency repairs or release to a foreign government as the interest of the United States may require.
- (6) Restricted rights apply only to computer software and include, as a minimum, the right to: (i) use computer software with the computer (or if inoperative, a backup) for which it was acquired at any Government installation; (ii) copy computer programs for safekeeping (archives) or backup purposes; (iii) modify computer software or combine it with other software, subject to continuation of the existing restricted rights provisions.

b. Government rights

- (1) Unlimited rights - The Government shall have unlimited rights in:
 - (a) Technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government assistance agreement or contract, at any tier;
 - (b) Computer software required to be originated or developed or generated as a necessary part performance under this or any other Government assistance agreement or contract, at any tier;
 - (c) Computer data bases prepared under this or any other Government assistance agreement or contract at any tier consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;
 - (d) Technical data or computer software, constituting corrections or changes to Government-furnished data or computer software, prepared or required to be delivered under this or any other Government assistance agreement or contract at any tier;
 - (e) Technical data or computer software which is in the public domain or has been or is normally released or disclosed by the recipient or subrecipients without restriction or further disclosure;
 - (f) Technical data or computer software listed or described elsewhere in this assistance agreement which the parties have predetermined and agreed will be furnished with unlimited rights.
- (2) Limited rights - The Government shall have limited rights in:
 - (a) Technical data, listed or described elsewhere in this assistance agreement which the parties have agreed will be furnished with limited rights;

(b) Unpublished technical data developed at private expense and unpublished computer software documentation related to computer software that is acquired with restricted rights provided that the data to which the Government's rights are limited is identified.

(3) Restricted rights - The Government shall have restricted rights in computer software, listed or described elsewhere in this assistance agreement, which the parties have agreed will be furnished with restricted rights, provided further that:

(a) The recipient clearly marks the computer software with a restricted rights legend and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. Failure of the recipient to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(b) The recipient may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth elsewhere in this assistance agreement and agreed to by the parties prior to the delivery data of the software.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use to any data or computer software which the recipient has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

c. Indemnification - The recipient shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the recipient of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this assistance agreement.

d. Acquisition of technical data and computer software from subcontractors

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this agreement, the recipient shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the recipient's rights in that subcontractor data or computer software which is required for the Government.

(2) The recipient and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

e. Relation to patents - Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

21. RESTRICTIONS ON PRINTING - (Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States) - [This clause is applicable to all assistance agreements except those in which the entire cost of printing is borne by the recipient for its own use in responding to terms of the agreement.]

b. Recipients may reproduce without further authorization, reports, data, or other written material required under the terms of the agreement for the use of NPS, provided that the material duplicated does not exceed 5,000 units of only one page, or that items consisting of multiple pages do not exceed 25,000 units in the aggregate. Recipients must advise the SO if the estimated quantities will exceed these ceilings so that Departmental/Committee approval can be obtained.

c. These restrictions do not preclude the writing, editing, preparation of manuscript copy and related illustrative material, or the publication of findings by recipients; or the administrative printing requirements of the recipient required for its own use to respond to the terms of the agreement.

22. REPRINTS OF PUBLICATIONS - [This clause is applicable to all assistance agreements.]

At such time as any article resulting from work under the agreement is published in a scientific, technical, or publication, two reprints of the publication should be sent to the GTR, clearly referenced with the agreement number and appropriate identifying information.

23. ACKNOWLEDGMENT OF SPONSORSHIP - [This clause is applicable to all assistance agreements.]

a. The recipient agrees that, in the release of information relating to this agreement, such release shall include a statement to the effect that the project or effort depicted was or is sponsored by the NPS.

b. For the purpose of this clause, "information" includes but is not limited to news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association meetings, symposia, etc.

c. The recipient agrees to the following conditions as to publications:

(1) In the event that it should desire to publicize any material developed under this agreement, a copy of the material shall be submitted to the GTR in advance of publication. All published material shall contain the following statement:

"This report was accomplished with assistance from the National Park Service, U.S. Department of the Interior. The statements, findings, conclusions, recommendations and other data in this report are solely those of the author and do not necessarily reflect the views of the U.S. Department of the Interior, National Park Service."

- d. The recipient further agrees to include this provision in any subcontract awarded as a result of this agreement.

24. COPYRIGHTS - [This clause is applicable to all assistance agreements.]

Except as otherwise provided in the agreement, the author or the recipient organization is free to copyright any books, publications, or other copyrightable materials developed in the course of or under this agreement, but the NPS shall reserve a royalty-free nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

25. INSPECTION - [This clause is applicable to all assistance agreements.]

The Government, through any authorized representative, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made by the Government on the premises of the recipient organization or a subcontractor, the recipient shall provide and shall require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such manner as will not unduly delay the work.

26. CHANGES IN PRINCIPAL INVESTIGATOR OR LEVEL OF EFFORT - [This clause is applicable to all assistance agreements.]

If a named PI or PD plans to or becomes aware that:

- a. Substantially more or less effort will be devoted to the project than anticipated in the agreement;
- b. Connections with the recipient will be severed; or
- c. Active direction of the project will be relinquished, the PI or PD shall advise the GTR and/or AO. The recipient shall initiate action appropriate to the situation and obtain AO approval in accordance with FMC 73-7.

27. CHANGES IN OBJECTIVES OR SCOPE - [This clause is applicable to all assistance agreements.]

Neither the phenomenon or phenomena under study nor the objectives of the project as stated in the proposal or agreed modifications thereto shall be changed with prior AO approval. Such changes should be proposed to the GTR by the PI in a written communication. If approved by the AO, the agreement will be modified.

28. OTHER ADMINISTRATIVE PROVISIONS AND ASSURANCES - [The following provisions and assurances are applicable to all assistance agreements]

The recipient hereby assures and certifies that:

- a. It possesses legal authority to apply for and accept this Agreement; that any necessary resolution, motion or similar action has been duly adopted or passed as an official act of its governing body, authorizing the filing of any application, including all understandings and assurances contained therein and directing and authorizing any person identified as its official representative to act in connection with any application or acceptance and to provide such information as may be required.
- b. It shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which recipient receives Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement.
- c. It shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (i) the primary purpose of an agreement is to provide employment or (ii) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the assistance-aided activity.
- d. It shall comply with the provisions of the Age Discrimination Act of 1975 (P.L. 94-135; 42 U.S.C. 6101, et. seq.) and in accordance with that Act, shall prohibit discrimination on the basis of age.
- e. It shall comply, to the extent applicable, with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et. seq.) which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.
- f. It shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education and Welfare

(45 CFR Parts 80, 81 and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.

g. It shall comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646; 42 U.S.C. 4601, et. seq.) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.

h. It shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 500, et. seq.) requiring the payment of the minimum wage for all covered employees and the payment of overtime.

i. It shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

j. It shall assure that no member of or delegate to Congress, or resident Commissioner, will be admitted to any share or part of this assistance agreement, or to any benefit that may arise from it. And further, it shall comply with the provisions of 18 U.S.C. 1913 which prohibits the direct or indirect use of any funds appropriated by Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence a member of Congress, to favor or oppose, any legislation or appropriation, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation. Finally, it warrants that it has not paid and agrees not to pay any bonus, commission or fee for the purpose of obtaining approval of its application for the financial assistance agreement.

k. It shall comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234, 87 Stat. 975, approved December 13, 1975) which call for the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

l. It shall ensure, pursuant to Executive Order 11738, that the facilities under its ownership, lease, or supervision, which shall be utilized in the accomplishment of the agreement are not listed on the Environmental Protection Agency (EPA) list of violating facilities and that it shall notify NPS of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

m. It shall comply with the provisions of the National Environmental Policy Act of 1969, (P.L. 91-190) and Executive Order 11514, as amended by Executive Order 11991, which promotes efforts to prevent or eliminate damage to the environment and biosphere and requires an Environmental Impact Statement when plans and programs may affect the quality of the environment.

n. It shall comply, to the extent applicable, with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et. seq., as amended by P.L. 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq., as amended by P.L. 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder.

o. It will comply with the provisions of Executive Order 11288, relating to the prevention, control and abatement of water pollution.

p. It shall assist NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et. seq.) by (i) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying NPS of the existence of any such properties, and by (b) complying with all requirements established by NPS to avoid or mitigate adverse effects upon such properties.

q. It shall comply with the provisions of the Cargo Preference Act of 1958 (46 U.S.C. 1241(b)(1)) as it relates to ensuring fair and reasonable participation by privately owned U.S. Flag commercial vessels in transporting cargoes and the requirements of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 11596) for preferential use of U.S. Flag air carriers for the international transportation of persons, personal effects and other cargo.

r. It shall comply with the provisions of Section 176 (c) of the Clean Air Act (42 U.S.C. 7401, et. seq.) to assure that Federal assistance activities do not detrimentally affect State efforts to attain and maintain the national ambient air quality standards and protect air quality cleaner than the standards.

s. It shall comply with the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et. seq.) to assure that Federal assistance activities are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species.

t. It shall comply with the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, et. seq.) as it relates to restriction on the taking and use of marine mammals.

u. It shall comply with the requirements of the Laboratory Animal Welfare Act of 1966, as amended (7 U.S.C. 2131, et. seq.) and the regulations promulgated by the U.S. Department of Agriculture pertaining to the care, handling and treatment of warm-blooded animals held or used for research, teaching or other activities supported by Federal funds.

v. It shall comply with the requirements of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135, et. seq.) as it relates to the application of any pesticide.

w. It shall comply with the requirements of the National Research Act of 1974, as amended, [42 U.S.C. 289 (1)(3)] and regulations issued by the U.S. Department of Health and Human Services (45 CFR, Part 46) as they relate to safeguarding the rights and welfare of any human subjects involved in research, development and related activities supported by Federal assistance funding.

x. It shall comply with the requirements of the Privacy Act of 1984 [5 U.S.C. 552(a)], OMB Circular A-108 and the Freedom of Information Act (5 U.S.C. 552) as amended, as they relate to the design, development or operation of any system of records on individuals performed by the Federal assistance recipient or subrecipient involving the performance of the government function, including the collection, use, and dissemination of records.

y. It shall comply with the provisions of Executive Order 12372, as implemented by Department of the Interior regulations [43 CFR Part 9; 48 FR 29224, June 24, 1983] as they relate to Intergovernmental Review of Federal Programs.

z. It shall comply with all requirements imposed by a Federal agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with applicable OMB Circulars.

[The following additional administrative provisions and recipient assurances are applicable to assistance agreements with State and local governments.]

aa. It shall comply with the provisions of the Hatch Political Act of 1940 (5 U.S.C. 1501) which limits the political activity of State and local government employees whose salaries are paid from Federal assistance funds. (Note: Educational institutions are exempt from this requirement.)

bb. It shall comply with the requirements of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et. seq.) to assure that Federal assistance activities are consistent with Federally-approved State coastal management programs designed to preserve, protect, develop and, where possible, restore or enhance the nation's coastal resources.

[The following additional administrative provisions and recipient assurances are applicable to assistance agreements involving construction and improvements.]

cc. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.

dd. It will require the facility to be designed to comply with the "American Standard Specializations for making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified, (41 CFR 101-19.603). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

ee. It will obtain approval by NPS of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; that it will submit to NPS for prior approval changes that alter the costs of the project, use of space, or functional layout; that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.

ff. It will cause work on the project to be commenced within a reasonable time after receipt of notification from NPS that funds have been approved and that the project will be prosecuted to completion with reasonable diligence.

gg. It will dispose of or encumber its title or other interests in the site and facilitate during the period of Federal interest or while the Government holds bonds, whichever is the longer.

hh. It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as NPS may require.

ii. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.

jj. It shall assist in compliance with Executive Order 11988, Flood Plain Management which requires avoidance, to the extent possible, of the long- and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid the direct or indirect support of flood plain development whenever there is a practicable alternative.

kk. It shall assist in compliance with Executive Order 11990, "Protection of Wetlands" which requires minimizing the destruction, loss or degradation of wetlands and efforts to preserve and enhance their natural and beneficial values.

29. ORDER OF PRECEDENCE - [This clause shall be applicable to all assistance agreements]

In the event of any inconsistency between any provisions of this agreement, the following order of precedence shall apply:

- a. Statement of Work (excluding the recipient's proposal, if incorporated).
- b. Special Provisions.
- c. General Provisions.
- d. Recipient's Proposal (if incorporated).

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cc file
cc Mr. A. Wright
C. Roberts
C. Jacobs

RECEIVED
OCT 03 1988

DIVISION OF
OIL, GAS & MINING

AGREEMENTS

DATA SHEET

1. Agreement Number: 1200-8-0001
2. Parties to Agreement:
 - a. National Park Service (WASO Division, Region, Park)
Mining and Minerals Branch, Rocky Mountain Region
 - b. Other(s) (Organization Name and Address)
State of Utah
Utah Division of Oil, Gas and Mining
Salt Lake City, UT
3. National Park Service Funding Data (If Applicable)
 - a. Amount to be Obligated (Current FY) \$28,000.00
 - b. Account Number 1290-5001-186
4. Type of Report (Circle) and Term (Year, Month, Day):
 - a. Basic Beginning Date 9-30-88 Ending Date 9-30-93
 - b. Reaffirmation Beginning Date Ending Date
 - c. Supplemental/Mod. Beginning Date Ending Date
5. Purpose of Agreement: Identification and assessment in NPS units of alternatives for closure of abandoned mine lands in the State of Utah, development of construction specifications for closure and the physical closure of mines.
6. Category Code:
 - a. Primary 04
 - b. Secondary

7. Signing Official:

Richard T. Kelley
Name

Contracting Officer

Title

9-28-88
Date